



Wireless
Infrastructure
Association

January 13, 2023

The Honorable John Thune
United States Senate
511 Dirksen Senate Building
Washington DC, 20510

Dear Senator Thune,

On behalf of the Wireless Infrastructure Association (WIA), I am pleased to provide a response to questions raised in your December 6, 2022, letter on the implementation of the Infrastructure Investment and Jobs Act (IIJA) and federal broadband deployment programs generally. WIA represents the businesses that build, develop, own, and operate the nation's wireless infrastructure. WIA and our members are deeply committed to ensuring all Americans have access to broadband – fixed and mobile – wherever they live, work, or travel. We appreciate your consistent leadership and commitment to that same objective.

Historic levels of funding for broadband deployment are being made available across a myriad of new federal programs, in addition to numerous legacy support programs. WIA welcomes this funding and supports Congress' goal of connecting every home and business in America to fixed and mobile broadband. To achieve that goal, it is essential that federal and state agencies implement spending programs consistent with congressional directives and that the multitude of programs, new and existing, are well coordinated. Additionally, it is important to recognize that funding alone is insufficient. It is also critical that government and industry work together to remove barriers that will unnecessarily delay broadband deployment. WIA appreciates this opportunity to highlight potential barriers to deployment and looks forward to working with your office to ensure all Americans have access to the digital tools needed to participate in the modern economy.

Below are responses to the specific questions raised in your letter to which WIA is best positioned to respond.

Infrastructure Investment and Jobs Act-specific Issues:

1. As part of the IIJA, Congress established a technology-neutral approach for the BEAD program. Do you believe NTIA followed Congress' intent in establishing a technology neutral approach? If not, should Congress consider amending the IIJA statute to make it more explicit that all technologies are allowed to participate? If so, how?

The IIJA itself promotes technology neutrality, but this concept has been deemphasized in its implementation. We encourage Congress to work with NTIA to ensure multiple broadband solutions, including fixed wireless access, are available for states to consider for their unique needs throughout the BEAD selection process.

During the debates leading up to the passage of the IIJA, some parties advocated that BEAD funding should be dedicated exclusively to fiber to the home service with other broadband technologies explicitly (or implicitly by adopting a definition of broadband service that could only be met with one technology) excluded from eligibility. Recognizing that a mix of technologies will be needed to ensure universal broadband availability, Congress rejected such proposals and established a service standard for funded networks that could be met by multiple technologies: broadband speeds no lower than 100 Mbps for downloads and 20 Mbps for uploads.

The statute makes clear that states must prioritize the funding of broadband projects based on a multitude of factors, but it rejected the notion that funds could only be used for one technology. Recognizing the desire for faster and higher capacity connections, Congress directed NTIA to require states to “prioritize funding for deployment of broadband infrastructure for priority broadband projects” in the BEAD program. However, the IIJA does not define a “priority broadband project” based upon a particular technology. Rather, a priority broadband project is defined as a project that meets certain speed and service quality metrics and can scale over time (regardless of technology type). Notably, the same section of the IIJA that requires states to prioritize “priority broadband projects” also requires states to prioritize projects based on, among other things, the “expediency with which a project can be completed.” Importantly, this is a primary criterion for prioritization, not a secondary criterion as it is treated in the BEAD Notice of Funding Opportunity (NOFO).

Thus, the IIJA need not be amended. Instead, Congress should work with NTIA to ensure the BEAD program is implemented consistent with the text and intent of the IIJA. To that end, WIA wishes to flag two issues:

- First, contrary to the statute, the BEAD NOFO defines a Priority Broadband Project as “a project that will provision service via end-to-end fiber-optic facilities to each end-user premises,” unless such a fiber project is deemed to exceed an “Extremely High Cost Per Location Threshold,” which NTIA encourages states to set “as high as possible.” If Congress wanted to limit “priority broadband projects” to one type of technology, it could have done so. It did not. Instead, the statute was technology neutral provided that the chosen technology could meet the broadband speeds set by Congress.
- Second, the concept of an “Extremely High Cost Per Location Threshold” is not found in the statute. The term is used in the BEAD NOFO to allow for non-fiber technologies to be funded, but only in areas where the costs to deploy fiber would be cost-prohibitive as determined by the state, with NTIA’s approval. Thus, NTIA logically recognizes that a mix of technologies will be necessary to connect all unserved and underserved areas due to funding constraints and the high deployment costs in parts of some states. We agree, but WIA is concerned that encouraging states to set the threshold too high will effectively, and unnecessarily, exclude non-fiber technologies from the start. WIA recently joined five other national associations in letters to state broadband offices laying out our views on why the Extremely High Cost Per Location Threshold should be set sufficiently low, rather than high, to give states’ maximum flexibility to choose the right mix of technology to meet their deployment and non-deployment broadband policy objectives. A copy of the letter is attached.

WIA sincerely appreciates the work that NTIA is doing to ensure every American has access to high-speed broadband. And we appreciate the benefits of fiber to the home service. However, we also

recognize the benefits of fixed wireless access (FWA) broadband service to the home (see attached WIA white paper on the benefits of FWA). FWA service is a reliable, high-speed, affordable alternative to fiber, and it is much faster to deploy. In fact, fixed wireless broadband is the fastest growing broadband service to the home in the marketplace today, with multiple providers delivering blazing fast service to millions of Americans. In the third quarter of 2022, the top two fixed wireless providers alone added over 900,000 new subscribers. Another carrier recently announced it is doubling its FWA subscriber base every 18 months. Nearly nine million homes are expected to be using fixed wireless at the end of 2022. With consumers already flocking towards fixed wireless, our ask is that states simply be given the flexibility to choose the right mix of technology to meet their broadband policy objectives.

3. The BEAD NOFO promotes government-owned networks. Do you believe government owned networks are an effective entity to deploy broadband networks? If yes, please explain.

On average, the broadband industry invests \$80 billion annually in capital expenditures (CapEx), a significant portion of which goes toward the buildout of the world's leading wireless networks. These networks are constantly evolving with increasingly fast speeds and greater capacity, empowering consumers and businesses across the country and driving the American economy. Beyond simply building the networks, experienced fixed and mobile broadband providers maintain and operate these networks to ensure consistent high-quality operations over the long term. Government-owned networks generally do not have a track record of delivering the same quality of service and have not shown the same long-term viability. However, in limited instances, government-owned networks have succeeded in the right circumstances.

The IIJA makes clear that no providers may be categorically excluded from participating in the BEAD program, including non-traditional providers (i.e. government owned networks). Importantly, informed by past failures, the IIJA includes language requiring states to ensure all potential recipients of funding (including government entities) have the financial, managerial, technical, and operational capability to meet BEAD program requirements. Consistent with the statute, the BEAD NOFO also includes important requirements to ensure that all potential recipients of BEAD program funding can demonstrate their ability to deliver before they are approved to receive funding. For a proposed government-owned network, it is essential that such proposals receive sufficient scrutiny to ensure their long-term viability.

4. One of the provisions of the IIJA requires products and materials used for broadband projects to be produced in the United States. Given the current supply chain issues, should Congress consider modifying this obligation or otherwise clarify this provision?

WIA supports the intent to stimulate domestic manufacturing and create jobs in the United States, however this goal should not thwart Congress' intent to deliver broadband service nationwide. WIA is proud to count some of the leading manufacturers and suppliers of telecommunications equipment in the U.S. among its members. Despite efforts to bolster domestic manufacturing and production, it remains true that manufacturers of key equipment along with access to raw materials are not always sufficiently available in the U.S. The global supply chain for all goods has been wildly disrupted over the last two years and continues to be vulnerable to fluctuations. WIA supports, to the extent this equipment does not present a national security threat to US networks, limited, programmatic waivers from the "Buy American" provisions of the IIJA for information and communication

technology products. NTIA successfully implemented such a waiver for networks funded by the Middle Mile Grant Program and should adopt similar rules for BEAD.

General Broadband Issues:

1. As noted above, there are over 130 programs supporting broadband access across 15 agencies.

a. To date, which of these programs do you believe has had the most success in delivering broadband services to truly unserved areas?

b. Should Congress consider eliminating any of these programs? If so, which ones?

c. Should Congress merge and combine any of these programs? If so, which programs would be best suited to be merged?

2. What specific reforms and constraints should Congress consider to ensure federal funds are not being awarded where providers are receiving other federal or state broadband funding support?

3. Should Congress take additional action in response to concerns that broadband funding may be used to overbuild existing service? If so, what reforms and constraints should be implemented?

As the GAO found in its [report](#), the current federal landscape has led to a “fragmented, overlapping patchwork of funding” which could lead to wasteful duplication of funding and effort. The FCC funds multiple programs through the Universal Service Fund (USF), programs that have successfully connected millions of homes, businesses, schools, libraries, and rural health care facilities. The Rural Utilities Service (RUS) also has multiple programs supporting broadband access. NTIA has funded broadband programs in the past and has most recently been allocated significant amounts of funding to distribute through multiple programs. In addition, the Treasury Department is in the process of providing substantial broadband deployment funds through multiple programs, including the Capital Projects Fund. Given the early stages of funding for the NTIA and Treasury programs, and even the FCC’s recently launched Rural Digital Opportunity Fund, it is difficult to say which programs have been most successful.

One challenge to date has been that the different programs do not have the same definitions or requirements to determine where funding should be targeted and what minimum requirements must be met to receive funding. This can be true even among different programs within the same agency. WIA supports Congressional efforts, such as legislation you introduced in the 117th Congress, to update and harmonize requirements for projects funded by the federal government.

In addition, federal agencies in the past have not always sufficiently coordinated and shared information to avoid overbuilding. As a result, there have been instances where one federal program will provide funding to a provider to overbuild a network that is funded by another federal agency. Congress has responded by requiring improved interagency coordination, which is critical to avoid these problems. WIA understands that the FCC, RUS, NTIA and the Treasury Department are regularly meeting to ensure program coordination, which is very important.

WIA strongly supports the language included in the IJJA that, “[i]t is the sense of Congress that Federal agencies responsible for supporting broadband deployment, including the Commission, the Department of Commerce, and the Department of Agriculture, to the extent possible, should align the goals, application and reporting processes, and project requirements with respect to broadband deployment supported by those agencies.” In its oversight function, Congress should ensure the agencies are taking steps to ensure such alignment.

4. Should Congress take additional action in response to concerns that broadband funding may be conditioned upon recipients imposing some form of rate regulation of broadband services, whether or not such requirements are explicitly denominated “rate regulation?” If so, what reforms and constraints should be implemented?

Congress and the FCC in bipartisan fashion have been consistently clear in their message that rate regulation will not solve the digital divide. The IJJA makes clear that, “[n]othing in this title may be construed to authorize the Assistant Secretary or the National Telecommunications and Information Administration to regulate the rates charged for broadband service.” Thus, NTIA may not regulate the rates that a provider charges over the networks funded via the BEAD program. While providers must include a low-cost option in order to receive funds, that requirement cannot be used to impose any form of rate regulation given the statute’s clear prohibition. Since NTIA must approve a state’s proposal for funding, NTIA cannot approve state proposals that include any forms of rate regulation. Doing so would in effect be indirectly “regulating the rates charged for broadband service” which the IJJA forbids. In its oversight function, Congress should ensure that rate regulation is not indirectly imposed through the approval of a state plan that includes any form of rate regulation.

6. How effective have the Memoranda of Understanding between (1) the FCC, USDA, and NTIA, and (2) the FCC, USDA, NTIA, and Treasury been with respect to broadband coordination efforts? Are there additional reforms federal agencies should implement to better coordinate on broadband deployment efforts?

WIA appreciates the ongoing efforts amongst federal agencies to coordinate on broadband expansion and support. WIA believes MOUs like these are important to set expectations and ensure regular information sharing. While the long-term effectiveness of these agreements is yet to be determined, thus far they have been a net positive for industry, consumers, and government.

7. Should Congress take steps to increase the transparency of agencies when allocating and disbursing broadband funds? If so, what steps should Congress take?

WIA supports transparency throughout the process of disbursing broadband funds, which is essential to ensuring the funding is distributed efficiently and effectively to achieve a state’s broadband goals for universal connectivity. Transparency ensures accountability and provides opportunities to adjust course when targets are not being met. WIA supports Congress requiring states to work closely with NTIA on developing broadband funding programs and encourages these requirements to be met. WIA also supports Congress in conducting its oversight duties to ensure that programs are being fairly and effectively run. Congress should ensure that the FCC’s

national broadband map includes information not just on where broadband is already deployed, but also where broadband commitments have been made to serve a location that has yet to be deployed to. Having a map that shows current deployment and where there are existing deployment commitments via federal government funding programs will be an important transparency tool to avoid duplicative government funding.

8. What, if any, permitting regulations at the federal level are impeding broadband deployment?

Congress has made significant strides in recent years to streamline federal permitting for telecommunications siting. The 2018 Farm Bill and the Ray Baum’s Act both required federal authorities to harmonize and streamline requirements for siting of communications infrastructure. While these laws are actively being implemented by various federal agencies, siting on Federal lands continues to be significantly slower and more costly than other comparable, non-federal locations. WIA supports the Committee undertaking more oversight actions to ensure that these requirements are actually being implemented in a timely and effective manner.

WIA supports Congress allocating additional funds and resources to Federal Land Management agencies to expedite broadband deployment. These offices are often working with minimal staff that often struggle to keep up with the normal pace of applications. Such offices will only become more backlogged as funds to expand rural connectivity increase the number of applications that need to be processed.

9. Does the FCC presently possess sufficient authority to preempt state and local requirements that may unreasonably impede the deployment of broadband networks? If not, what steps should Congress consider to address the unreasonable impediments?

Yes, relying on Sections 332(c)(3) and 253(d) of the Communications Act, the FCC has reasonably exercised such preemptive authority when necessary. For example, the Commission appropriately exercised such authority when it adopted rules regarding the treatment of small wireless facilities by state and local governments, which the 9th Circuit upheld. These rules help ensure an equitable and predictable landscape across the U.S. for siting small cells which will help enable next generation 5G deployment.

Still, Congressional action would provide more certainty and encourage accelerated deployment of new technologies. Challenges continue to arise to FCC rulings, which could be addressed by Congress codifying prior FCC decisions. For example, numerous localities have challenged the FCC’s important 2020 clarifications of Section 6409 that streamlined the use of existing infrastructure to promote deployment. These important FCC orders promote an environment of regulatory certainty for the wireless industry. By encouraging the continued improvement and upgrade of wireless networks on existing infrastructure, these orders have facilitated the buildout of 5G networks. Congress could, for example, codify shot clocks for applications, provide for “deemed granted” remedies, and eliminate duplicative processes. WIA has previously supported legislative action to prevent unreasonable impediments to wireless infrastructure deployment and would welcome the opportunity for continued discussions on this topic.

Further, Congress can act to ensure the FCC's rules promoting infrastructure deployment apply to all services—voice and broadband alike. WIA's members have identified several instances in which courts have upheld local government denials of applications by determining that FCC rules only apply to infrastructure solely used for voice telephony services. This happened most recently in New York (*Extenet Sys., Inc. v. Vill. of Flower Hill*, 2022 U.S. Dist. LEXIS 135267 (E.D.N.Y. July 29, 2022)) but has become more frequent in recent years. The recent sunset of 3G services demonstrates the salience of this issue as more of the mobile services millions of Americans rely on move over packet-switched networks. Neither Congress nor the FCC intended to expedite only the deployment of voice telephony networks, but rather all networks, including those that are used to provide broadband and advanced services. WIA appreciates that your office has sought to address this issue in the STREAMLINE Small Cell Deployment Act and supports continued efforts to ensure this issue does not delay the critical deployment of advanced services.

10. What specific steps can Congress take to reduce costs to broadband providers when deploying new networks?

Congress can reduce costs to deploying new networks by harmonizing and streamlining permitting requirements among federal, state, and local authorities. Delayed or duplicative application processes drive significant unexpected costs into a project. Congress should ensure requirements are consistently applied so applicants can appropriately allocate costs and maximize investments. Congress should also seek to reduce duplicative application requirements, such as when deployments are taking place in areas previously approved for economic activity, to reduce unnecessary costs.

In addition, federal funds should not be limited to purely CapEx, but should also be allowed to be used for operational expenditures (OpEx). Limiting federal funds to CapEx use generally prevents them from being used to improve underlying infrastructure. This is an inefficient use of funds when these improvements can connect or improve connection to more people for fewer dollars.

11. Would updating pole attachment Regulations spur more rural broadband deployment? If so, what actions should be taken?

Congress should repeal the current exemption from FCC rules for poles owned by municipalities and co-ops in Section 224 of the Communications Act. Disparate treatment under the rules allows for these groups to charge significantly higher rates for attachment without providing additional benefits to the attachers. Congress should make the FCC's rules on pole attachments applicable to all pole providers. The FCC should also ensure that all pole owners are responsible for timely responses to pole attachment requests to avoid anti-competitive practices that thwart Congress' objective to connect all Americans.

13. Are there other broadband policy issues that Congress should consider reforming during the 118th Congress?

Finally, WIA supports further legislation which would exempt broadband grants received from the American Rescue Plan Act (ARPA) and the Infrastructure Investment and Jobs Act (IIJA) from tax requirements, such as the Broadband Grant Tax Treatment Act introduced last Congress by Senators Moran and Warner. In the past, the IRS had the flexibility to act unilaterally to exempt certain grants from taxation but lost this ability due to statute changes contained in the Tax Cuts and Jobs Act. Accordingly, it is incumbent on Congress to pass legislation to exempt these grants from taxation in order to achieve the ubiquitous deployment goals contemplated by these statutes.

Thank you for this opportunity to provide the wireless infrastructure industry's input on these important matters of broadband expansion as wireless infrastructure will play a critical role in connecting all Americans. We welcome further dialogue with yourself and other stakeholders to support this vital mission.

Sincerely,



Patrick R. Halley
President & CEO

Incl:
Letter to State Broadband Leaders on Extremely High Cost Threshold
FWA White Paper